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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Guidelines on international events and forced evictions

Report of the Secretary-General

1. In its resolution 1995/29 the Sub-Commission on Prevention of Discrimination and Protection of Minorities, reaffirming that every woman, man and child has the right to a secure place to live in peace and dignity, recognizing that the practice of forced evictions involves the involuntary removal of persons, families and groups from their homes and communities, resulting in greater homelessness and inadequate housing and living conditions, and aware that forced evictions can be carried out, sanctioned, demanded, proposed, initiated or tolerated by a range of actors, strongly urged Governments to undertake immediately measures, at all levels, aimed at rapidly eliminating the practice of forced eviction through, inter alia, immediately renouncing existing plans involving forced evictions, repealing legislation allowing forced evictions and ensuring the right to security of tenure to all citizens and other residents. It decided to consider the issue of forced evictions at its forty-eighth session under the agenda item entitled "The realization of economic, social and cultural rights" and to determine how most effectively to continue its consideration of the issue.

2. In paragraph 10 of the same resolution, the Sub-Commission requested the Secretary-General to submit an updated report at its forty-eighth session.

3. In the same resolution, the Sub-Commission also requested the Secretary-General to convene an expert seminar on the practice of forced

eviction and the relationship of this practice to internationally recognized human rights, with a view to developing comprehensive human rights guidelines on development-based displacement.

4. In this context, at its fifty-second session, on 11 April 1996, the Commission on Human Rights, in its decision 1996/104, taking note of Sub-Commission resolution 1995/29 of 24 August 1995, bearing in mind the work of other United Nations bodies on this issue, notably that of the United Nations Centre on Human Settlements (Habitat), and mindful of the need to avoid unnecessary duplication, decided to recommend to the Economic and Social Council, in the light of the conclusions of the United Nations Conference on Human Settlements (Habitat II), to be held in Istanbul in June 1996, to authorize the holding of an expert seminar on the practice of forced evictions with a view to developing comprehensive human rights guidelines on development-based displacement.

5. The present report should be seen as supplementing the analytical report compiled by the Secretary-General pursuant to Commission on Human Rights resolution 1993/77 (E/CN.4/1994/20), and the report of the Secretary-General submitted to the Sub-Commission at its forty-seventh session (E/CN.4/Sub.2/1995/13).

Forced eviction

6. In its resolution 1995/29, the Sub-Commission identified the practice of forced evictions as involving "the coerced and involuntary removal of persons, families and groups from their homes, lands and communities, whether or not deemed legal under prevailing systems of law, resulting in greater homelessness and inadequate housing and living conditions". It is also important that both the Sub-Commission and the Commission have recognized and affirmed that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing. In addition, the elimination of the practice of forced evictions is of central importance to the full enjoyment by everyone of economic, social and cultural rights.

7. Forced evictions can always be attributed directly to decisions, legislation or policies explicitly pursued by States or to the failure of States to intervene in halting forced evictions by third parties. Besides, virtually all instances of forced evictions are planned, formulated, and often announced prior to being carried out. However, forced evictions can, under certain circumstances and subject to specific conditions, be consistent with international human rights standards. Such evictions can be classified as "legal evictions". This distinction, however, must be interpreted in a very narrow sense. As a means of distinguishing evictions which are consistent with legal norms and those which are not, terms such as "arbitrary evictions", "illegal evictions", and "unfair evictions" are often utilized.

8. The causes of forced evictions are very diverse. The practice can be carried out in connection with development and infrastructure projects, in particular dams and other energy projects, land acquisition or expropriation, housing or land reclamation measures, hallmark international events (Olympic Games, World's Fairs, etc.), in the context of unrestrained land or housing speculation, housing renovation, urban redevelopment or city beautification

initiatives and mass relocation or resettlement programmes. When evictions do occur, there is a tendency to seek to justify them on the basis of broad generalizations by declaring, for example, that they are "inevitable", "unavoidable", a "necessary price for progress", or required in order to promote "development".

9. The World Summit for Social Development, held in Copenhagen in March 1995, clearly showed that "sustainable development" should be seen in a much broader sense than in economic terms alone. Paragraph 6 of the Copenhagen Declaration on Social Development (A/CONF.166/9, chap. I, resolution I, annex I) reads:

> "We are deeply convinced that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, which is the framework for our efforts to achieve a higher quality of life for all people. Equitable social development that recognizes empowering the poor to utilize environmental resources sustainably is a necessary foundation for sustainable development. We also recognize that broad-based and sustained economic growth in the context of sustainable development is necessary to sustain social development and social justice".

10. The World Summit acknowledges "that people are at the centre of [the] concerns for sustainable development and that they are entitled to a healthy and productive life in harmony with the environment" (para. 8).

11. Moreover, the heads of State and Government committed themselves to

> "a political, economic, ethical and spiritual vision for social development that is based on human dignity, human rights, equality, respect, peace, democracy, mutual responsibility and cooperation, and full respect for the various religious and ethical values and cultural backgrounds of people. Accordingly, [they] will give the highest priority in natural, regional and international policies and actions to the promotion of social progress, justice and the betterment of the human condition, based on full participation by all" (para. 25).

12. Furthermore, they agreed (para. 26) to create a framework for action created to:

> "(a) Place people at the centre of development and direct [their] economies to meet human needs more effectively;
>
> "...
>
> "(i) Ensure that disadvantaged and vulnerable persons and groups are included in social development, and that society acknowledges and responds to the consequences of disability by securing the legal rights of the individual and by making the physical and social environment accessible;
>
> "...

"(1) Support progress and security for people and communities whereby every member of society is enabled to satisfy his or her basic human needs and to realize his or her personal dignity, safety and creativity."

Consequences of forced eviction

13. Though some types of forced evictions may be unavoidable, the human costs of forced evictions are so extensive that any justification for eviction must be analysed within a human rights framework. Women, children and youth, indigenous peoples, ethnic, racial, religious or other minorities, low-income social groups, populations living under occupation and those without the legal security of tenure tend to suffer disproportionately from the practice of forced eviction. In cases where evictions are unavoidable, an obligation would exist on the part of the proponents of eviction to take measures to compensate the victims, so as to reduce the adverse consequences to a minimum.

14. The human costs of forced evictions are indeed substantial and can involve a wide range of additional negative impacts upon the lives and livelihood of those affected, including: exacerbating individual and social impoverishment, including homelessness and the growth of new slums; physical, psychological and emotional trauma; insecurity for the future; physical hardship and the onset of illness; substantially higher transportation costs; loss of livelihood and traditional lands; worse housing conditions; physical injury or death resulting from the use of arbitrary violence; the removal of children from school; arrest or imprisonment of those opposing an eviction; loss of faith by victims in the legal and political system; reduction of low-income housing stock; racial segregation; loss of culturally significant sites; the confiscation of personal goods and property; substantially higher housing costs; absence of choice for alternative accommodation; criminalizing self-help housing options; increased social isolation; and tension with existing dwellers at resettlement sites.

15. In the words of the Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Mr. Theo van Boven, in his final report (E/CN.4/Sub.2/1993/8, para. 21), "the issue of forced removals and forced evictions has in recent years reached the international human rights agenda because it is considered a practice that does grave and disastrous harm to the basic civil, political, economic, social and cultural rights of large numbers of people, both individual persons and collectivities".

Legal protection and guidelines

16. With respect to the legal protection of possible victims and the guidelines on international events and forced evictions, it is important to keep in mind the findings of the Secretary-General's analytical report (E/CN.4/1994/20) and his report to the Sub-Commission at its forty-seventh session (E/CN.4/Sub.2/1995/13). The aspects discussed below can be added. However, it should be made clear that developing guidelines on forced evictions can only be a partial solution. They are important, but should not be allowed to be used as a rationale for encouraging the eviction process, nor viewed as a panacea for addressing the human rights component of the practice. If pursued faithfully and realistically by Governments,

international agencies and others, guidelines can discourage and deter the eviction process and can assist in finding real alternatives to this continuing violation of the human right to adequate housing.

17. Good location of the relocation site is one of the most critical aspects because location is the key to access to income-earning opportunities. Most failures in relocation and resettlement are linked to poor location, and it is very difficult to overcome this problem through income-generation programmes.

18. When relocation is unavoidable, a relocation/resettlement plan should be prepared and implemented which allocates sufficient resources to ensure that those affected are fairly compensated and rehabilitated. They should benefit from the development process on a sustainable basis. At a minimum, they should not be worse off than before relocation.

19. The parties benefiting from the development causing the relocation should pay the full costs of the relocation process including the socio-economic rehabilitation of the relocatees to at least their former level. It is important that this principle is made clear, preferably through the legal system and supporting institutions, so that it can be incorporated in financial assessments.

20. Eviction impact statements may also contribute to the protection of the potential victims, the reduction of social tension and the mitigation of the dislocation of the inhabitants. Under such a procedure, permission to remove occupants from any given site will not be granted unless such a statement, prepared by persons or organs fully independent of the actor requesting the eviction, is provided to the competent authorities, and if the statement does not clearly indicate that the target community will be adequately protected.

21. Compensation of assets and rehabilitation. Compensation refers to what the owner of property receives when it is compulsorily acquired by the Government. Rehabilitation refers to measures to re-establish those displaced. This goes beyond cash compensation. It involves active replacement of housing and income-generating possibilities. It can be applied to those without legal title to land, whereas compensation may often be limited to those with legal title.

22. The Commission on Human Rights, in its resolution 1993/77, recommended that "all Governments [should] provide immediate restitution, compensation and/or appropriate and sufficient alternative accommodation or land, consistent with their wishes and needs, to persons and communities that have been forcibly evicted, following mutually satisfactory negotiations with the affected persons or groups". Moreover, enabling legislation is required to provide for fair compensation to the affected population and must specify regulations for the valuation of lost assets. Legislation should provide for compensation through the substitution of the lost asset by another of comparable productive capacity. Besides this, it should be the responsibility of the actor requesting the relocation, that relocatees have adequate access to social services such as education and health care in the new site. Compensation should be made at replacement cost and prior to moving. Such

legislation concerning compensation would complement the legislation and related domestic remedies required to be put in place to protect persons affected by eviction.

23. Finally, the role of non-governmental organizations in the prevention and elimination of the practice of forced evictions must be underlined. Their role is one of great importance and should be strongly promoted. Their involvement as intermediaries between policy makers and affected persons for the mutual benefit of all actors involved, and especially to defend the interests of the victims, must be stressed. Well-informed non-governmental organizations may help to obtain political support and to alert public opinion to deter planned forced evictions, and they may assist in the resettlement, as their role is often crucial in the relocation process. In addition, people often do not know what their rights and options are in situations of looming forced eviction, and NGOs can give legal and professional assistance.

24. The members of the Sub-Commission are invited to consider the present report, with a view to proposing further elements that could enhance the drafting of guidelines on international events and forced evictions for the consideration of the Sub-Commission at its forty-ninth session.

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